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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Docket No: Q63327

Moshe WEINER, et al.

Appln. No.: 09/892,767

Group Art Unit: 2837

Confirmation No.: 3418

Examiner: Marlon T. FLETCHER

Filed: June 28, 2001

For: TELE-KARAYOKE

SUBMISSION OF APPELLANT'S BRIEF ON APPEAL

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

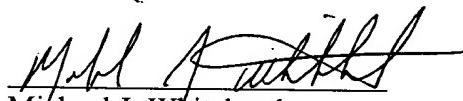
P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Submitted herewith please find an original and two copies of Appellant's Brief on Appeal. A check for the statutory fee of \$330.00 is attached. The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account. A duplicate copy of this paper is attached.

Respectfully submitted,

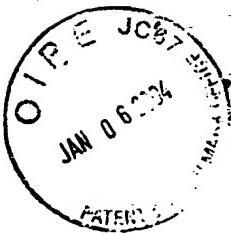

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APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. § 1.192

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 1.192, Appellant submits the following:

I. REAL PARTY IN INTEREST

The real party in interest is COMVERSE NETWORK SYSTEMS, LTD. by virtue of an assignment executed by Moshe WEINER and Erez REINSHMTDT (Appellant, hereafter), on July 21, 2001, and recorded by the Assignment Branch of the U.S. Patent and Trademark Office on June 28, 2001 (at Reel 011946, Frame 0662).

II. RELATED APPEALS AND INTERFERENCES

To the knowledge and belief of Appellant, the Assignee, and the undersigned, there are no other appeals or interferences before the Board of Appeals and Interferences that will directly affect or be affected by the Board's decision in the instant Appeal.

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III. STATUS OF CLAIMS

Claims 1-42 are pending in the application. Claims 1-13, 15, 18, 20-25, 27, 30, 31 and 33-39 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Catona (U.S. Patent No. 6,288,319). Claims 14, 16, 19, 20, 26, 28 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Catona in view of Lewis (U.S. Patent No. 5,564,001). Claims 17, 32 and 40-42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Catona.

IV. STATUS OF AMENDMENTS

In response to the final Office Action (Paper No. 6) in which claims 1-42 were finally rejected, Appellant filed a Response under 37 C.F.R. § 1.116 on August 6, 2003. The Examiner issued an Advisory Action on October 30, 2003. A Notice of Appeal along with a Petition for Extension of Time under 37 C.F.R. § 1.136 was filed on November 6, 2003.

V. SUMMARY OF THE INVENTION

The present invention relates to a multimedia messaging service based application which records and sends cellular telephone karaoke performances to another user. *See Specification, para. 1.* Multimedia messaging service (MMS) is the ability to record, send and receive messages comprising a combination of text, sounds, images and video to MMS capable cellular telephones. *Id. at para. 2.*

MMS was developed to enhance messaging based on the users' new demands. *Id. at para. 3.* In the 3G cellular (3rd generation of cellular communication specifications) architecture, MMS has been added. *Id.* As stated above, this allows users of cellular telephones to send and receive messages exploiting the whole array of media types while also making it possible to support new content types as they become popular. *Id.*

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As most people are well aware, karaoke is basically people singing along with music of a known song while the words of the song are not played or are played at a significantly lower volume than the music. *Id. at para. 4.* Occurring synchronously to the music, a karaoke terminal displays the words to the song which consequently allows a user to sing the words of the song even if the user does not know the words. *Id.* The karaoke terminal not only displays the words to the song but also synchronizes the displaying of the words of the song with the music so that a user knows precisely when each word of the song should be sung. *Id.* Said differently, the karaoke terminal displays the words of the song synchronously with the music of the song being played so that a person can sing the words to the song. *Id.* Prior to the present invention, users who desired to "karaoke" needed specially manufactured karaoke equipment or at least a personal computer with special karaoke software. *Id. at para. 5.* Additionally, the user would be limited to when and where the user could perform karaoke of a particular song. *Id.*

The present invention provides an application for MMS which allows a user to perform karaoke using the user's cellular telephone and have the performance recorded by an MMS server as a message that can subsequently be sent to another user. *Id. at para. 9.* Referring to Figure 1, a user 10 accesses a Tele-Karaoke service provider 30. *Id. at para. 18.* In a preferred embodiment, the user accesses the Tele-Karaoke service provider 30 by calling a specific number using his cellular telephone. *Id.* The Tele-Karaoke service provider 30 allows the user 10 to choose a specific song among a library of different songs. *Id.*

Once the user 10 chooses the desired song from the Tele-Karaoke service provider 30, the Tele-Karaoke service provider 30 retrieves the song and synchronized text from the Tele-

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Karaoke server 80. *Id. at para. 19.* The user's cellular telephone uses a protocol called SMIL (Synchronized Multimedia Integration Language) to enable the user's phone to play music and display correlated text at the same time. *Id.*

The user 10 hears the music using a headset or attachable ear-piece and reads the text (i.e. the song's words) from the telephone's display. *Id. at para. 20.* At this stage the user 10 sings along with the music. *Id.* The telephone has a microphone and the words sung by the user into the microphone are captured by the Tele-Karaoke server 80. *Id.* Furthermore, the tele-karaoke server 80 is the source of the music and text that are sent to the user 10. *Id.* When the Tele-Karaoke server 80 receives the words sung by the user 80, it combines them with the rest of the content of the original song (the music and the text) into one multi media entity and temporarily stores (caches) it within the server. *Id.* Said differently, the Tele-Karaoke server 80 records the user's singing while electronically combining the user's singing with the original multimedia stream. *Id.* However, since there is a delay between the user's singing and the time the original stream was sent, a delay must be inserted to the user's singing when combining the user's singing with the original stream. *Id.* The Tele-Karaoke server 80 calculates the delay by using the user's singing performance. *Id.* The music of the original stream can be faintly heard in the background of the user's singing performance and as such, the delay necessary is calculated and inserted by the Tele-Karaoke server 80 based on the time difference between the original stream and the user's recorded stream. *Id..*

When the song has finished, the Tele-Karaoke server 80 forwards the multi media entity to the MMS 50 for handling as a multi media message and forwarding it to a chosen destination.

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Id. at para. 22. The MMS 50 will store the performance in the appropriate customer storage space 60. *Id.*

Once recorded, the karaoke performance can be accessed by the user 10. *Id. at para. 26.* The user can send the recorded performance to a friend in much the same way as one would forward a voicemail message. *Id.* The user 10 can also edit the recorded performance to add video or text to the karaoke performance. *Id. at para. 33.* Finally, the user 10 can also chose to delete the performance or keep it stored in the MMS server.

VI. ISSUES

1. Whether claims 1-13, 15, 18, 20-25, 27, 30, 31 and 33-39 are anticipated under 35 U.S.C. § 102(e) by Catona (U.S. Patent No. 6,288,319).
2. Whether claims 14, 16, 19, 20, 26, 28 and 29 are unpatentable under 35 U.S.C. § 103(a) as being obvious over the combination of Catona in view of Lewis (U.S. Patent No. 5,564,001).
3. Whether claims 17, 32 and 40-42 are unpatentable under 35 U.S.C. § 103(a) as being obvious over Catona.

VII. GROUPING OF CLAIMS

Claims 1-13, 15, 18, 20-25, 27, 30, 31 and 33-39 stand or fall together. Claims 14, 16, 19, 20, 26, 28 and 29 stand or fall together. Claims 17, 32 and 40-42 stand or fall together.

VIII. ARGUMENTS

- A. Whether claims 1-13, 15, 18, 20-25, 27, 30, 31 and 33-39 are anticipated under 35 U.S.C. § 102(e) by Catona (U.S. Patent No. 6,288,319).

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A claim is “anticipated” under 35 U.S.C. § 102 only if the prior art reference teaches every claimed element and limitation. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Rejections under 35 U.S.C. § 102 are proper only when the claimed subject matter is identically disclosed or described in the prior art. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Thus the reference must clearly and unequivocally disclose every element and limitation of the claimed invention. *Id.*

Appellant submits that Catona fails to teach each and every limitation of claims. Specifically, Catona fails to teach an MMS server that records the karaoke performance as an MMS message. As such, Catona cannot possibly anticipate claims 1-13, 15, 18, 20-25, 27, 30, 31 and 33-39.

In maintaining the rejections, the Examiner alleges that that the elements of the claimed invention are taught by Catona. The Examiner’s allegations are summarized in the table below:

Claimed element	Alleged corresponding element in Catona
Tele-karaoke server	Song Database 18
User interface	Client 12
MMS multimedia messaging server	User Tracks Database 20

Catona fails to teach recording the karaoke performance as an MMS message.

Claims 1-13, 15, 18, 20-25, 27, 30, 31 and 33-39 require the karaoke performance to be recorded as an MMS message. Therefore, to maintain a rejection under 35 U.S.C. § 102, the

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Catona reference must teach that the karaoke performance is recorded as an MMS message.

Catona does not teach recording the karaoke performance as an MMS message. The User Tracks Database 20 of Catona does not record the karaoke performance as an MMS message. In fact, no device taught or disclosed in Catona records the karaoke performance as an MMS message. Furthermore, the Examiner is completely silent with respect to where this limitation is taught by Catona. The Examiner is not free to ignore limitations in the claim in order to maintain a rejection under 35 U.S.C. § 102. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). Since there is no teaching in Catona of recording the karaoke performance as an MMS message, Catona fails to anticipate the claimed invention.

Instead of teaching a karaoke system that records the performance as an MMS message, Catona teaches a computer network-based karaoke system that records the performance as an audio file. *Catona*, col. 2:7-10. In Catona, the user is required to have a personal computer in order to run a platform-independent programming language, such as JAVA. *Id. at col. 3:7-9*. The user's computer then controls the mixing of the pre-recorded song 30 and the custom audio track 40. *Id. at col. 10:12*. In Catona, the recorded performance (audio file) is subsequently mixed with the song (audio file) in the user's computer 12, and then stored in the User Tracks Database 20 as an audio file. However, the present invention records the performance by recording the karaoke performance (song + user voice + song words) directly as an MMS message. In other words, as soon as the karaoke performance is recorded in the present invention, the performance is capable of being sent, received and displayed by a cellular phone. Catona does not even suggest sending the performance by phone. Catona would require

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additional formatting and media conversion to send, receive and display the recorded performance by a cellular phone because Catona does not record the karaoke performance as an MMS message. Thus, since Catona only teaches recording the karaoke performance as an audio file, Catona fails to teach recording the karaoke performance as an MMS message.

Catona fails to teach that the karaoke performance is recorded by an MMS server.

The Examiner alleges that that the User Tracks Database 20 teaches the claimed MMS server. Then, the Examiner alleges that the karaoke performance is recorded in the User Tracks Database 20 (alleged MMS server) as shown in Fig. 3 of Catona. *See Office Action of May 6, 2003.* However, the User Tracks Database 20 is not an MMS multimedia messaging server and does not record the karaoke performance, but instead, the User Tracks Database 20 is simply a large memory which stores electronic greeting cards that have previously been recorded. *See Catona, col. 2:47-49; col. 3:4-6.* In other words, the User Tracks Database 20 (alleged MMS server) does not record (the process of transforming the user's live performance into electronic data), but instead it stores (placing a previously recorded performance into memory) electronic greeting cards. *Id.*

Catona actually teaches that the client's computer records the karaoke performance. As shown in Fig. 6 at step 146 of Catona, the user's computer records the user's karaoke performance. In other words, the recording of the karaoke performance is executed by the client's computer 12 and not by the User Tracks Database 20 (alleged MMS server). *See Catona, col. 1:49-52; col. 2:16-18.* In the office actions of November 21, 2002 and May 6, 2003, the Examiner has not disputed this contention, nor has the Examiner explained how the

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User Tracks Database 20 (alleged MMS server) records the karaoke performance. Thus, Catona fails to teach an MMS server that records the karaoke performance as an MMS message.

In view of the above remarks, Appellant submits that Catona fails to teach each and every limitation of Appellant's claims. As a result, Appellant respectfully requests that the rejection of claims 1-13, 15, 18, 20-25, 27, 30, 31 and 33-39 under 35 U.S.C. § 102 be reversed.

B. Whether claims 14, 16, 19, 20, 26, 28 and 29 are unpatentable under 35 U.S.C. § 103(a) as being obvious over the combination of Catona in view of Lewis (U.S. Patent No. 5,564,001).

Claims 14, 16, 19, 20, 26, 28 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Catona in view of Lewis (U.S. Patent No. 5,564,001). Since claims 14, 16, 19, 20, 26, 28 and 29 depend upon independent claims 1 and 20, and since Lewis does not cure the deficient teachings of Catona with respect to independent claims 1 and 20, Appellant submits that claims 14, 16, 19, 20, 26, 28 and 29 are patentable at least by virtue of their dependency from independent claims 1 and 20.

Additionally, to establish a *prima facie* case of obviousness, there must be a reasonable expectation of success that the combination would produce the claimed invention. See MPEP § 2143.02.

In maintaining the rejections, the Examiner acknowledges that Catona fails to teach a telephone as the interface to the claimed system. *See Office Action of May 6, 2003, page 4.* The Examiner relies on the teachings of Lewis to teach the user interface being a telephone or cellular

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phone. The Examiner then alleges that it would have been obvious to utilize the teachings of Lewis with the apparatus of Catona "because Lewis provides an alternative interface for use of the multimedia system." *See Id.*

However, the Examiner's proposed combination would not reasonably be expected to be successful as required by MPEP § 2143.02. The telephone taught in the Lewis reference does not have enough memory or processing capabilities to download, process and record the karaoke performance. Catona teaches that the user interface (i.e. the user's computer) downloads, processes and records the karaoke performance, and as a result, the user interface must have such memory and processing capabilities. Catona does not teach a karaoke system in which a user interface that does not have the memory or capability to download, process and record the karaoke performance can be utilized. In other words, Catona requires its user interfaces to have sufficient memory and processing capability such that the karaoke song can be downloaded, played and recorded. The cellular telephone of Lewis does not have such capability. Therefore, simply substituting a telephone or cell phone (as discussed in Lewis) for the user interface of Catona will not have a reasonable expectation of success because the telephone of Lewis does not have the memory or capability that is required by the user interface taught in Catona.

In view of the above remarks, the Examiner has failed to provide a reasonable expectation of success in combining the teachings of Catona and Lewis. Therefore, Appellant requests that the rejection of claims 14, 16, 19, 20, 26, 28 and 29 under 35 U.S.C. § 103(a) be reversed.

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C. Whether claims 17, 32 and 40-42 are unpatentable under 35 U.S.C. § 103(a) as being obvious over Catona.

Claims 17, 32 and 40-42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Catona. Since claims 17, 32 and 40-42 depend from independent claims 1, 20 and 35, and since the Catona reference does not disclose all of the limitations of independent claims 1, 20 and 35 as discussed above, Appellant submits that claims 17, 32 and 40-42 are patentable at least by virtue of their dependency from independent claims 1, 20 and 35.

Additionally, to establish a *prima facie* case of obviousness the Examiner must show that the prior art references, when combined, teach or suggest all of the claim limitations. See MPEP § 2143. Appellant respectfully submits that the references cited above by the Examiner fail to teach or suggest all of the claim limitations as set forth in the present application.

It is first pointed out that the Examiner lists the rejection of claims 17, 32 and 40-42 as being obvious over Catona alone. However, the Examiner readily admits that Catona "does not disclose editing text and video." *See Office Action of May 6, 2003.* The Examiner then uses the Liu reference to teach other such features, even though Liu is not listed in the rejection. If the missing limitations were truly obvious over the Catona reference alone (as recited in the formal rejection), the Examiner would not need to rely on the teachings of the Liu reference. Therefore, the rejection as listed is fundamentally defective since the Examiner admits that Catona fails to teach some of the limitations of the claims, and provides no explanation why it would have been obvious to modify Catona to include these limitations.

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Nevertheless, the system of Liu does not allow a user to edit a recorded message by adding text or video. The Examiner relies on Fig. 4, and in particular, text 102 (lyrics) and video 96 to allegedly teach this limitation. However, the text 102 and the video 96 disclosed in Liu is combined and played for the user in order to produce a karaoke performance. Said differently, the text 102 and video 96 are combined before the karaoke performance. The Liu reference does not teach editing a recorded message (i.e. editing a previously recorded karaoke performance) by adding text or video. In fact, the Liu reference does not teach recording any karaoke performance or allowing a user to edit a recorded message. Accordingly, Liu fails to teach or suggest editing a recorded message by adding text or video.

In view of the above, Appellant submits that the rejection, as listed in the final office action, is inherently flawed since the Examiner admits that the Catona reference fails to disclose editing text and video as recited in the rejected claims, and provides no explanation why it would have been obvious to modify Catona to include these limitations. Furthermore, since the Liu reference also fails to teach this limitation, Appellant requests that the rejection of claims 17, 32 and 40-42 under 35 U.S.C. § 103(a) be reversed.

The present Brief on Appeal is being filed in triplicate. Unless a check is submitted herewith for the fee required under 37 C.F.R. § 1.192(a) and 1.17(c), please charge said fee to Deposit Account No. 19-4880.

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The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


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Date: January 6, 2004



APPENDIX

CLAIMS 1-42 ON APPEAL:

1. (original): A tele-karaoke system for performing karaoke comprising:
 - a tele-karaoke server storing a plurality of songs in karaoke format;
 - a user interface allowing a user to select a song in karaoke format from said tele-karaoke server in order to perform the song as a karaoke performance; and
 - an MMS multimedia messaging server recording the karaoke performance as an MMS message.
2. (original): The tele-karaoke system of claim 1, wherein the MMS multimedia messaging server allows the user to send the recorded performance as an MMS message to another.
3. (original): The tele-karaoke system of claim 1, wherein the MMS multimedia messaging server allows the user to edit the recorded karaoke performance.
4. (original): The tele-karaoke system of claim 1, wherein the MMS multimedia messaging server allows the user to listen to the recorded karaoke performance.
5. (original): The tele-karaoke system of claim 1, wherein the MMS multimedia messaging server allows the user to store the recorded karaoke performance.
6. (original): The tele-karaoke system of claim 5, wherein said MMS multimedia messaging server includes customer storage space to store recorded performances of the user.
7. (original): The tele-karaoke system of claim 1, further comprising a tele-karaoke service provider coupled to the user interface and the tele-karaoke server to regulate user interaction and retrieve songs from the tele-karaoke server.

8. (original): The tele-karaoke system of claim 7, wherein the MMS multimedia messaging server allows the user to send the recorded karaoke performance as a message to another user.

9. (original): The tele-karaoke system of claim 7, wherein the MMS multimedia messaging server allows the user to edit the recorded karaoke performance.

10. (original): The tele-karaoke system of claim 7, wherein the MMS multimedia messaging server allows the user to listen to the recorded karaoke performance.

11. (original): The tele-karaoke system of claim 7, wherein the MMS multimedia messaging server allows the user to store the recorded karaoke performance.

12. (original): The tele-karaoke system of claim 7, wherein said MMS multimedia messaging server includes a customer storage space to store recorded tele-karaoke performances of the user.

13. (original): The tele-karaoke system of claim 12, wherein the MMS multimedia messaging server allows the user to at least one of send, store, edit and listen to the recorded performance as a message to another.

14. (original): The tele-karaoke system of claim 1, wherein the user interface is a cellular telephone.

15. (original): The tele-karaoke system of claim 1, wherein the user interface is a personal computer.

16. (original): The tele-karaoke system of claim 1, wherein the user interface is a fixed telephone.

17. (original): The tele-karaoke system of claim 13 , wherein the user edits the recorded message by adding at least one of text and video .

18. (original): The tele-karaoke system of claim 7, wherein the user interface is a personal computer.

19. (original): The tele-karaoke system of claim 7, wherein the user interface is a fixed telephone.

20. (original): A method for allowing a user to perform karaoke comprising:
downloading a chosen song in karaoke format from a tele-karaoke server;
performing karaoke on the chosen song; and
recording the performed karaoke by a MMS multimedia messaging server as an MMS message.

21. (original): The method for allowing a user to perform karaoke of claim 20, further comprising:

sending the message of the recorded performance to another person.

22. (original): The method for allowing a user to perform karaoke of claim 20, further comprising:

editing the message of the recorded performance.

23. (original): The method for allowing a user to perform karaoke of claim 20, further comprising:

storing the message of the recorded performance.

24. (original): The method for allowing a user to perform karaoke of claim 20, further comprising:

receiving another user performance as an MMS message.

25. (original): The method for allowing a user to perform karaoke of claim 20, wherein prior to downloading,

accessing a tele-karaoke service provider to choose the song;

choosing the song through the tele-karaoke service provider; and

retrieving the chosen song to be downloaded from the tele-karaoke server by the tele-karaoke service provider.

26. (original): The method for allowing a user to perform karaoke of claim 25, wherein the user accesses the tele-karaoke service provider via a cellular telephone.

27. (original): The method for allowing a user to perform karaoke of claim 25, wherein the user accesses the tele-karaoke service provider via a personal computer.

28. (original): The method for allowing a user to perform karaoke of claim 25, wherein the user accesses the tele-karaoke service provider via a fixed telephone.

29. (original): The method for allowing a user to perform karaoke of claim 25, wherein the user accesses the tele-karaoke service provider via a cellular telephone.

30. (original): The method for allowing a user to perform karaoke of claim 25, wherein after recording the performed karaoke by an MMS multimedia messaging server as a message, sending the message of the recorded performance to another user.

31. (original): The method for allowing a user to perform karaoke of claim 25, wherein after recording the performed karaoke by an MMS multimedia messaging server as a message, listening to the message of the recorded performance.

32. (original): The method for allowing a user to perform karaoke of claim 25, wherein after recording the performed karaoke by an MMS multimedia messaging server as a message, editing the message of the recorded performance by adding at least one of text and video.

33. (original): The method for allowing a user to perform karaoke of claim 25, wherein after recording the performed karaoke by an MMS multimedia messaging server as a message, storing the message of the recorded performance.

34. (original): A tele-karaoke system for performing karaoke comprising: an MMS multimedia messaging server storing a plurality of songs in karaoke format, and a user interface for downloading a song in karaoke format chosen from said MMS multimedia messaging server and for performing the song as a performance while the MMS multimedia messaging server records the performance as an MMS message.

35. (original): A method for recording karaoke performances as an MMS message, comprising:

storing a plurality of songs in karaoke format; and
recording a selected one of said songs as an MMS message.

36. (original): The method of claim 35, further comprising forwarding the recorded MMS message to a selected user.

37. (original): The method of claim 35, further comprising editing the recorded MMS message.

38. (original): The method of claim 35, further comprising listening to the recorded MMS message.

39. (original): The method of claim 35, further comprising storing the recorded MMS message.

40. (original): The method of claim 37, wherein editing the recorded MMS message includes adding text.

41. (original): The method of claim 37, wherein editing the recorded MMS message includes adding video.

42. (original): The method of claim 40, wherein editing the recorded MMS message further includes adding video.